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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,702	08/18/2003	Vivek Jaiswal	P16507	4365
76/973 7590 10/01/2008 The Law Offices of Christopher K. Gagne c/o Intellevate, LLC B.O. Box 52050 Minneapolis, MN 55402				
EXAMINER				
PATEL, CHURAG R				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/642,702

Applicant(s)

JAISWAL ET AL.

Examiner

CHIRAG R. PATEL

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Arguments

Applicant's arguments, see pre-appeal brief, filed November 16, 2007, with respect to the rejection(s) of claim(s) 1-21 under 35 U.S.C. 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Gourraud et al. (US 2004/0037407) and Daoud et al. (US 2002/0087694). Examiner notes that claims 22-24 are cancelled by the applicants.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 recites the limitation " the load for the second node" in line 2 and "the transmitting node" in line 3 of claim 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation " the transmitting node" in line 1 of claim 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to which is referred to as the transmitting node

and the receiving node as claim limitations recite, "cause the processor to *transmit the load* for first node and the load for the second node *to the transmitting node*".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, and 7-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gourraud et al. – hereinafter Gourraud (US 2004/0037407) in view of Daoud et al. – hereinafter Daoud (US 2002/0087694)

As per claims 1, 7, and 19, Gourraud discloses a method of communicating load, comprising:

determining a load on a first node, ([0022])

factoring the load into a session initiation protocol Q-value for the first node, ([0022])

transmitting the Q-value to a second node via one or more load brokers where each load broker is a back-to-back user agent. ([0025])

Gourraud fails to disclose where the Q-value is an integer value based on both (1) a contact priority and (2) a number of calls or an amount of information being processed for a call. Daoud discloses where the Q-value is an integer value based on both (1) a contact priority and (2) a number of calls or an amount of information being processed for a call. ([0038]-[0041], [0053]) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose where the Q-value is an integer value based on both (1) a contact priority and (2) a number of calls or an amount of information being processed for a call in the disclosure of Gourraud. The motivation for doing so would have been to identify a requested level of service for a transaction wherein the transaction may be processed in accordance with the requested level of service. ([0008])

As per claim 2, Gourraud / Daoud disclose the method of claim 1. Gourraud further discloses further comprising the first node subscribing to a load factor exchange service in a message transmitted to the second node. ([0025])

As per claim 3, Gourraud / Daoud disclose the method of claim 2. Gourraud discloses further comprising the second node confirming receipt of the subscription in a message transmitted to the first node. ([0025])

As per claim 8, Gourraud / Daoud disclose the article of manufacture of claim 7. Gourraud discloses wherein the instructions are to cause the processor to transmit the

load for the first node and the load for the second node to the transmitting node in the session initiation protocol Q-value. ([0025])

As per claim 9, Gourraud / Daoud disclose the article of manufacture of claim 8. Gourraud fails to disclose wherein the transmitting node is to transmit the information to the least loaded of the first node and the second node. Daoud discloses wherein the transmitting node is to transmit the information to the least loaded of the first node and the second node. ([0047],[0053]) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose transmitting node is to transmit the information to the least loaded of the first node and the second node in the disclosure of Gourraud. The motivation for doing do would have been to identify a requested level of service for a transaction wherein the transaction may be processed in accordance with the requested level of service. ([0008])

As per claim 10, Gourraud/ Daoud disclose the article of manufacture of claim 7. Gourraud fails to disclose wherein the instructions are to cause the information to be redirected from the first node to the second node when the second node becomes less loaded than the first node. Daoud discloses the article of manufacture of claim 7, wherein the instructions are to cause the information to be redirected from the first node to the second node when the second node becomes less loaded than the first node. ([0047],[0053]) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to wherein the instructions are to cause the information

to be redirected from the first node to the second node when the second node becomes less loaded than the first node. in the disclosure of Gourraud. The motivation for doing do would have been to been to identify a requested level of service for a transaction wherein the transaction may be processed in accordance with the requested level of service. ([0008]).

As per claims 11 and 16, Gourraud / Daoud disclose the article of manufacture of claim 7. Gaourraud fails to disclose wherein load is based on at least one metric including call capacity of the first and second nodes, processing capability of the first and second nodes, network bandwidth at the first and second nodes, and network availability of the first and second nodes. Daoud discloses wherein load is based on at least one metric including call capacity of the first and second nodes, processing capability of the first and second nodes, network bandwidth at the first and second nodes, and network availability of the first and second nodes. ([0038]-[0041]) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose wherein load is based on at least one metric including call capacity of the first and second nodes, processing capability of the first and second nodes, network bandwidth at the first and second nodes, and network availability of the first and second nodes. in the disclosure of Gourraud. The motivation for doing do would have been to efficiently balance the incoming load. ([0005])

As per claims 12 and 17, Gourraud / Daoud disclose the article of manufacture of claim 11. Gourraud fails to disclose wherein the metrics of the first and second nodes are weighted based on the capacity of the nodes for that metric. Daoud discloses wherein the metrics of the first and second nodes are weighted based on the capacity of the nodes for that metric. ([0026]) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose wherein the metrics of the first and second nodes are weighted based on the capacity of the nodes for that metric in the disclosure of Gourraud. The motivation for doing so would have been to efficiently balance the incoming load. ([0005])

As per claim 13, Gourraud / Daoud disclose the article of manufacture of claim 7. Gourraud discloses wherein the instructions are further to cause the processor to receive a subscription from the transmitting node and at least one second transmitting node, and wherein the load for at least one of the first node and the second node is caused to be transmitted to subscribing nodes upon request. ([0022],[0025])

As per claim 14, Gourraud discloses a session initiation protocol device, comprising:

- a session initiation protocol device, comprising: ([0005])
- a network adaptor coupled to a network;([0006])
- a calculation module to provide load information for at least one of the session initiation protocol entities to a querying entity through the network adaptor. ([0022])

a session initiation protocol load module to receive session initiation protocol load information from session initiation protocol entities on the network through the network adaptor ([0025])

Gourraud fails to disclose wherein the load information is factored into a session initiation protocol Q-value, where the Q- value is an integer value based on both (1) a contact priority and (2) a number of calls or an amount of information being processed for a call. Daoud discloses wherein the load information is factored into a session initiation protocol Q-value, where the Q- value is an integer value based on both (1) a contact priority and (2) a number of calls or an amount of information being processed for a call. ([0038]-[0041], [0053]) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose wherein the load information is factored into a session initiation protocol Q-value, where the Q- value is an integer value based on both (1) a contact priority and (2) a number of calls or an amount of information being processed for a call in the disclosure of Gourraud. The motivation for doing do would have been to identify a requested level of service for a transaction wherein the transaction may be processed in accordance with the requested level of service. ([0008])

As per claim 15, Gourraud / Daoud disclose the session initiation protocol device of claim 14. Daoud discloses wherein the calculation module is furthermore to provide loads for a plurality of session initiation protocol entities to the querying entity. ([0025])

As per claims 18 and 21, Gourraud / Daoud disclose the session initiation protocol device of claim 14. Gourraud fails to disclose wherein the load of the session initiation protocol entity is transmitted to the querying entity as a factor in a Q value. Daoud discloses wherein the load of the session initiation protocol entity is transmitted to the querying entity as a factor in a Q value. ([0038]-[0041]) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose wherein the load of the session initiation protocol entity is transmitted to the querying entity as a factor in a Q value in the disclosure of Gourraud. The motivation for doing so would have been to efficiently balance the incoming load. ([0005])

As per claim 20, Gourraud / Daoud disclose the location service of claim 19. Gourraud discloses wherein the processor is to retrieve the load factor associated with at least one of the session initiation protocol entities when requested to do so by a requesting session initiation protocol entity and transmit that load information to the requesting session initiation protocol entity through the network adaptor. ([0022],[0025])

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gourraud (US 2004/0037407) / Daoud (US 2002/0087694) further in view of Armbruster et al. – hereinafter Armbruster (US 6,243,760)

As per claim 4, Gourraud / Daoud disclose the method of claim 1. Gourraud fails to disclose further comprising: further comprising: a third node requesting the Q-value

for the first node from the second node; and the second node transmitting the Q-value for the first node to the third node. Armbruster discloses further comprising: a third node requesting the Q-value for the first node from the second node; and the second node transmitting the Q-value for the first node to the third node. (Col 1 lines 26-35) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose further comprising: a third node requesting the Q-value for the first node from the second node; and the second node transmitting the Q-value for the first node to the third node. in the disclosure of Gourraud. The motivation for doing so would have been to reduce bandwidth requirements on a network. (Col 1 lines 19-21)

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gourraud (US 2004/0037407) / Daoud (US 2002/0087694) Armbruster (US 6,243,760) further in view of Heiner et al. – hereinafter Heiner (US 7,280,482)

As per claim 5, Gourraud / Daoud / Armbruster disclose the method of claim 4. Gourraud fails to disclose wherein the second second also transmits Q-values for a plurality of alternate nodes to the third node. Heiner discloses wherein the second second also transmits Q-values for a plurality of alternate nodes to the third node. (Col 2 lines 35-46) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose wherein the second second also transmits Q-values for a plurality of alternate nodes to the third node in the disclosure of

Gourraud. The motivation for doing do would have been to provide efficient dynamic load distribution. (Col 2 lines 27-31)

As per claim 6, Gourraud/Daoud /Armbruster disclose the method of claim 5. Gourraud fails to disclose comprising the third node utilizing the one of the first node and the alternate nodes having the lowest Q-value as an intermediate node. ([0047], [0053]) At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to disclose the third node utilizing the one of the first node and the alternate nodes having the lowest Q-value as an intermediate node in the disclosure of Gourraud. The motivation for doing do would have been to identify a requested level of service for a transaction wherein the transaction may be processed in accordance with the requested level of service. ([0008]).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ton (US 2002/0067704) is directed to method for ensuring reliable mobile IP service and transferring load information between the Home agents. A close review of these references is recommended.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chirag R Patel whose telephone number is (571)272-

7966. The examiner can normally be reached on Monday to Friday from 7:30AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

/C. R. P./
Examiner, Art Unit 2141

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145